

AUG 01 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSEFINA ARVIZU MARQUEZ,

Defendant - Appellant.

No. 04-50414

D.C. No. CR-02-00003-VAP-4

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Josefina Arvizu Marquez appeals from the 66-month sentence she received following a jury-trial conviction for conspiracy to possess with intent to distribute heroin, methamphetamine, and marijuana, in violation of 21 U.S.C. §§ 841(a) and

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

846, and for attempting to provide contraband to a prison inmate, in violation of 18 U.S.C. § 1791(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291.

Marquez contends that the district court's condition of supervised release requiring her to report to the probation officer within 72 hours of reentry into the United States violates the Fifth Amendment. This contention is foreclosed by this court's opinion in *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (9th Cir. 2006).

However, because Marquez was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the district court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). See *United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional error under *United States v. Booker*, 543 U.S. 220 (2005)).

REMANDED.